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102 N. Y. 729, 7 N. E. 822. But what the foreign jurisdiction will recognize as a valid conveyance limits the power of the court of equity. See *Waterhouse* v. *Stansfield*, 10 Hare 254, 255. And since in the case of Mexican land the conveyance must be completed by certain registration in Mexico, for a United States court to decree the passing of title, there would involve ordering acts abroad. But even if there were no jurisdictional difficulties in the principal case, the title has been in litigation in Mexico and a receiver put in charge under a law so different from that of California that the practical difficulties would prevent the rendition of a decree affecting the land. Yet the litigation should be entertained where complete justice can best be secured. *Harris* v. *Pullman*, 84 Ill. 20. And the court achieved complete justice in the most practical way by ordering the transfer of the stock and avoiding any possible complications involving the rights of Mexico.

ESTOPPEL — ESTOPPEL BY DEED — LAND MORTGAGED BEFORE ACQUIRED — PRIORITY OF MORTGAGE TO JUDGMENT LIEN. — A tenant in common, after mortgaging the property as sole owner, acquired the interest of his cotenant. Later, a creditor obtained a judgment against him. *Held*, that as to the subsequently acquired interest the judgment lien takes priority over the mortgage. *Gallagher* v. *Stern*, 95 Atl. 518 (Pa.).

In the United States it is generally held that a warranty deed or mortgage passes, by way of estoppel, any title which the grantor may thereafter acquire. *Philly* v. *Sanders*, 11 Oh. St. 490; *Jarvis* v. *Aikens*, 25 Vt. 635. Accordingly the grantee prevails against a later purchaser or creditor of the grantor. *Jarvis* v. *Aikens*, *supra; White* v. *Patten*, 24 Pick. (Mass.) 324; *Tefft* v. *Munson*, 57 N. Y. 97. But Pennsylvania and a few other states follow the English view that, although the grantor is estopped by his conveyance, the after-acquired title does not pass. *Calder* v. *Chapman*, 52 Pa. St. 359; *Burtners* v. *Keran*, 24 Gratt. (Va.) 42, 66. The estoppel is therefore held not to affect the subsequent purchaser or creditor if he had no notice. And the record of any mortgage prior to the conveyance by which the mortgagor took his title is no notice of the encumbrance, since it is outside the chain of title. *Dodd* v. *Williams*, 3 Mo. App. 278; *Calder* v. *Chapman*, *supra*. *Cf. Bingham* v. *Kirkland*, 34 N. J. Eq. 229. But in the principal case the mortgage was not outside the chain of title, since it was the duty of the title examiner, in his search for liens against the mortgagor, to go back beyond the time when the latter acquired the interest of his co-tenant to the time when he acquired his original interest as tenant in common. Had he done so he would have found the mortgage. Accordingly, he should be charged with constructive notice. Even under the minority view, therefore, the case is unsound.

GOOD WILL — RIGHT TO USE FIRM NAME — AGREEMENT BETWEEN TENANTS IN COMMON. — A copartnership known as B. & Co. used its name, good will, and trade marks under a rental agreement with B., who owned them but was not a member of the firm. B. bequeathed them in equal shares to his sons C. and D., who entered the firm but retained the name, good will, and trade marks as their separate property. C. and. D. then entered into an agreement providing that upon the death of either, the survivor should have the right to continue the business of B. & Co. and the exclusive right to use the half interest of the other in the firm name, good will, and trade marks, upon payment of one-third of the net profits to the legal representatives of the deceased. C. died, and D. continued the business under the agreement. Later he notified the plaintiff, who was D.'s legal representative, that he would no longer pay her any of the profits, as he was no longer using her half interest. She thereupon brought an action against him. *Held*, that she is entitled either to one-third of the net profits or to a decree restraining D. from using the name, good

will, and trade marks, and providing for a sale of the same by a receiver for the joint benefit of D. and the plaintiff. *Barclay* v. *Barclay*, 155 N. Y. Supp. 221.

Ordinarily the name, good will, and trade marks of a partnership are firm assets, which each partner, upon dissolution, is entitled to have converted into cash and included in the firm accounts. *Slater* v. *Slater*, 175 N. Y. 143, 67 N. E. 224; *Moore* v. *Rawson*, 185 Mass. 264, 70 N. E. 64; *Hill* v. *Fearis*, [1905] 1 Ch. 466. Of course this rule may be changed by agreement of the parties. And in many jurisdictions it is held that in the absence of an express agreement to the contrary, each partner, upon dissolution, has an equal right to use the firm name, if he does not thereby expose his former partners to risk of liability. *Burchell* v. *Wilde*, [1900] 1 Ch. 551; *Young* v. *Jones*, 30 Fed. Cas., No. 18,159. It is recognized, therefore, that such property is, in its nature, susceptible of separate and independent use by each of two coöwners. *Merry* v. *Hoopes*, 111 N. Y. 415, 18 N. E. 714. But where the retiring partner retains his interest in the name, giving the other partner merely the right to use it in return for a share of the profits, it is submitted that there is an implied agreement that, so long as the business continues, the retiring partner's interest will be used for his benefit. Such an agreement is specifically enforceable, for the subject-matter is unique and a fiduciary relation is involved. Moreover, since the value of a firm name or a trade mark lies in its connection with the business with which it has been used, it cannot be assigned apart from that business. *Thorneloe* v. *Hill*, [1894] 1 Ch. 569. Therefore, as long as D. continued the business of B. & Co., the plaintiff's interest was not restored to her, and she was entitled to compensation.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — EXEMPTION OF RAILROADS FROM LIABILITY FOR NEGLIGENT INJURIES TO PULLMAN EMPLOYEES. — A waiter in a Pullman car was killed by the negligence of a railroad. His contract with the Pullman Company contained a provision releasing the railroads from liability for negligent injuries. Suit is brought by his widow under the Colorado Death Statute. *Held*, that his widow may not recover. *Lindsay* v. *Chicago, B. & Q. R. Co.*, 226 Fed. 23 (C. C. A., 7th Circ.).

For a discussion of this case, see NOTES, p. 435.

INSURANCE — ELECTION AND WAIVER OF CONDITIONS — EFFECT OF FAILURE OF INSURER TO RETURN PREMIUMS ON BREACH OF CONDITION. — The plaintiff, supposing that a house belonged to him, insured it with the defendant company. The policy provided that it should be void if the insured did not own the property in fee, and also provided that if the policy should become void, the premiums should be returned. After a loss, the defendant learned of a defect in the plaintiff's title, but did not return the premium. *Held*, that the neglect to return the premium was a waiver of the breach of condition, and the defendant was therefore liable. *Scott* v. *Liverpool & London & Globe Ins.* 86 S. E. 484 (S. C.).

It is generally recognized that a provision in an insurance policy that under a certain condition it shall be void means only that the insurer will then have the privilege of avoiding the policy. See 2 MAY, INSURANCE, § 497. Nevertheless it has been uniformly held that the insured cannot recover without proving that the insurer by some affirmative action has waived the breach of condition. *Ins. Co.* v. *Wolff*, 95 U. S. 326. See *Titus* v. *Glens Falls Ins. Co.*, 81 N. Y. 410, 419. Recent authorities have, however, been very liberal in finding such a waiver. *Titus* v. *Glens Falls Ins. Co., supra; Replogle* v. *American Ins. Co.*, 132 Ind. 360, 31 N. E. 947. See *Ins. Co.* v. *Eggleston*, 96 U. S. 572, 577. The principal case can only be supported on the theory that the insurer has merely an election to avoid the policy, which can only be taken advantage of by promptly displaying an intent to do so. See *Provincial Ins. Co.* v. *Leduc*,